

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
METROCALL INC.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Metrocall Inc. (hereinafter “Vendor”), with its principal place of business at 6677 Richmond Hwy., Alexandria, VA. 22306.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a posting on the Texas Building and Procurement Commission’s Electronic State Business Daily, posting number DIR-SDD-TMP-056, on April 22, 2005, for Pager Services and Equipment.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing List are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, and finally Appendix C.

2. Product and Service Offerings

A. Products

Products available under this Contract are limited to Pagers. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above.

B. Services

Services available under this Contract are limited to Pager Services. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

3. Customer Discount

The Customer price is specified in Appendix C. DIR and Vendor agree to review the pricing contained in Appendix C on an annual basis and adjust rates as mutually agreed.

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4. DIR Administrative Fee

The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.00.

5. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Service Delivery Division
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Tom Schilling, Chief Financial Officer
Metrocall Inc.
6677 Richmond Hwy
Alexandria, VA. 22306
Phone: (703) 660-6677 ext 6600
Facsimile: (703) 721-3051
Email: tom.schilling@usamobility.com

6. Authorized Exceptions to Terms and Conditions.

1) Appendix A, Section 2, Term, is hereby restated as follows:

The term of the Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up two (2) optional two-year terms.

2) Appendix A, Section 4, Definitions, is amended to include the following:

I. Pager Service - is the wireless transmission service, which includes equipment and telecommunications services that provides two way wireless communication connectivity via a hand held device

3) Appendix A, Section 7, Customer Discount, is restated as follows:

B. Discounts, Taxes and Telecommunications Fees

- 1) The discount rates set forth in this Contract are intended as minimums for the term of the Contract and may not be changed to be less except by Amendment to the Contract; provided however, that nothing herein prevents Vendor from offering a higher discount to a Customer because of volume.
- 2) Vendor has waived all telecommunications fees, surcharges, assessments, to include Federal Universal Service Fund Charge and the Regulatory charge. No other FCC or PUC authorized fee, surcharge or assessment applicable to wireless telecommunications services may be imposed during the term of this Contract, without a prior amendment to authorize such imposition under the Contract. Vendor agrees to not bill for any items which are not mandated by the FCC or PUC and which are otherwise not applicable to wireless telecommunications services. Vendor also agrees to not bill for items for which a Customer has an exemption. Vendor agrees to promptly correct any incorrect billings that occur.

- 3) During the term of this Contract, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee on these Products and or Services, which Vendor desires to impose under this Agreement, shall require an amendment in order to be effective against the State of Texas and Customers. In the event of a change in the law or fee structures, which results in an exemption from payment in favor of the state of Texas or its Customers, Vendor shall give effect to the exemption without the necessity of a contract amendment.
 - 4) Vendor acknowledges that governmental-entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State-agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. Customers may issue a tax exemption certificate upon request. Private institutions of higher education that may be eligible to order services under this Contract are not exempt from these taxes.
- 4) **Appendix A, Section 11, B, Reporting and Administrative fees**, is amended to read as follows:

5) Accurate and Timely Submission of Reports:

The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within five (5) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within five (5) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within five (5) business days, Vendor must contact DIR and provide a correction. The corrective plan of action shall be subject to DIR approval.

- 5) **Appendix A, Section 12, A, Indemnification**, is amended to read as follows:

1) Acts or Omissions:

Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suite demands proceeding, cost, damages and liabilities, including attorneys fees, directly arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the contract. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as requested by DIR.

2) Infringements:

a) Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights directly relating to the product or service supplied under the Contract. Vendor agrees to defend against any and all third party claims at Vendor's

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expense, whether or not such claims become the subject of litigation provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) grants Vendor control over the defense and settlement thereof, and (iii) reasonably cooperates in response to Vendor's requests for assistance. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

- 6) **Appendix A, Section 12, H, Security of Premises, Equipment, Data and Personnel**, is amended to read as follows:

Vendor may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage by willful misconduct or negligence of its employees or subcontractors.

This Contract is executed to be effective as of the date of last signature.

Metrocall Inc.

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: signature on file

Authorized By: signature on file

Name: Gary W. Ash

Name: Brian S. Rawson

Title: Regional Vice President

Title: Director of Service Delivery

Date: 8/22/05

Date: 8/19/05

Legal: 8/19/05